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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami Date: AUG 23 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
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> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the applicant was arrested and/or convicted of the following:

1. On October 21, [redacted] in the Circuit Court of the Judicial Circuit, [redacted] Case No. [redacted], the applicant was adjudged guilty of Count 1, battery on a law enforcement officer; and Count 2, disorderly intoxication. He was sentenced to imprisonment for a term of 364 days.

2. On October 21, [redacted], in the Circuit Court of the Judicial Circuit, [redacted] Case No [redacted] the applicant was adjudged guilty of Count 1, unlawful sale or purchase of cannabis on or near school property; Count 2, unlawful possession of cannabis. He was sentenced to imprisonment for a term of 364 days, concurrent with sentence imposed in Case No. [redacted] (paragraph

3. On November 18, [redacted] in [redacted], Case No. [redacted] the applicant was arrested and charged with Count 1, retail theft; and Count 2, possession of marijuana. On January 8, [redacted], the applicant was found guilty of both counts, and he was assessed a total of $150 in fine and costs as to Count 1, and execution of sentence was suspended as to Count 2.

4. On September 18, [redacted], in [redacted] Case No. [redacted] the applicant was arrested and charged with Count 1, retail theft; and Count 2, possession of marijuana. On October 27, [redacted] the applicant was adjudged guilty of both counts, and he was placed on 6 months probation and assessed $105 court costs as to Count 1, and sentenced to 8 days as to Count 2.

5. On December 18, [redacted] in [redacted] the applicant was arrested upon arrival at [redacted] Airport aboard an Eastern Airline for having in his possession approximately 10 ounces of cocaine. The final court disposition of this arrest is not reflected in the record.

6. On July 23, [redacted], in [redacted] the applicant was arrested and charged with retail theft. The final court disposition of this arrest is not reflected in the record.

7. On February 17, [redacted] in [redacted], the applicant was arrested and charged with leaving the scene of an accident with injuries. The final court disposition of this arrest is not reflected in the record.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 3 and 4 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966); Matter of Chen, 10 I&N Dec. 671 (BIA 1964). Likewise, battery on a law enforcement officer is a crime of moral turpitude when it involves (1) bodily harm to the victim, (2) knowledge that

the victim is an officer, and (3) is performing an official duty. See Matter of Danesh, 19 I&N Dec. 669, (BIA 1988).

Pursuant to [redacted] Statute Section [redacted] a person commits battery if he (a) actually and intentionally touches or strikes another person against the will of the other; or (b) intentionally causes bodily harm to another person. While violation of this section is classified a misdemeanor of the first degree, section [redacted] of the [redacted] Statute requires that whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer while the officer is engaged in the lawful performance of his duties, it shall therefore be reclassified from a misdemeanor of the first degree to a felony of the third degree.

The arrest report (paragraph 1 above), shows that two officers were escorting the applicant who was being ejected from a park after he attempted to grab a child from the mother. While outside the park, the applicant removed his sneaker and threw it at the officer in the face. He was taken into custody and once the applicant was placed in a police vehicle he began striking his head on the car door window. The crime of battery on a police officer in this case is a crime involving moral turpitude.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude (paragraphs 1, 3, and 4 above).

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his convictions of possession and sale (trafficking) of controlled substances (paragraphs 2 and 4 above). There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of 30 grams or less of marijuana. The applicant does not qualify under this exception.

In view of the foregoing, the applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.